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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No. 221

HENRY FRIEDMAN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 31, 1927.

(27,496)

(27,426)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1919.**

# No. 671.

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*vs.*

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1920.

1 In the United States Court of Claims.

HENRY FRIEDMAN, Plaintiff,

vs.

THE UNITED STATES.

No. 33,982.

I. *Plaintiff's Petition.*

(Filed July 31, 1918.)

To the Honorable the Chief Justice and Judges of the Court of Claims of the United States:

The petition of the plaintiff, Henry Friedman, respectfully represents:

1. That he is a citizen of the United States and a resident of the City of Chicago, in the County of Cook and State of Illinois; that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and that he is the sole owner of the claim hereinafter stated, no part of which has ever been sold, assigned or discharged.

2. That on or about the 23rd day of February, 1910, plaintiff purchased from the United States, through its duly authorized officers, at the United States Land Office at Salt Lake City, Utah, under Section 2347 of the Revised Statutes of the United States, one hundred and twenty (120) acres of coal land situated within fifteen (15) miles of a completed railroad, and described as the Southwest Quarter (SW. ¼) of the Southeast Quarter (SE. ¼) and the
2 South Half (S. ½) of the Southwest Quarter (SW. ¼) of Section nine (9), township thirteen (13) South, Range eight (8) East, Salt Lake Meridian, State of Utah, the said purchase or entry being known and designated as Serial Number 05242, Salt Lake City, Utah.

3. That said Section 2347 of the Revised Statutes of the United States fixes the price of all coal lands within fifteen miles of a completed railroad at twenty ($20) dollars an acre, and of all coal lands more than fifteen (15) miles from a completed railroad at — ($10) dollars an acre; but the Secretary of the Interior, at the date of plaintiff's said entry or purchase and for sometime prior thereto, unlawfully and improperly claimed that under the true construction of said Section 2347 of the Revised Statutes of the United States he was authorized to appraise and sell coal lands at and for prices fixed by

appraisement in excess of said twenty dollars and ten dollars an acre, and by virtue of said alleged authority he, the said Secretary of the Interior, did unlawfully cause to be appraised the land purchased by the plaintiff as aforesaid at the rate of fifty ($50) dollars an acre, and did unlawfully require of and exact from the plaintiff the said sum of fifty ($50) dollars an acre for the said one hundred and twenty (120) acres of coal land, which said sum so exacted was thirty-six hundred ($3,600) dollars in excess of the amount plaintiff was lawfully required to pay to the United States for said coal land.

4. That under the provisions of the Act of Congress of March 26, 1908 (35 Statutes at Large, page 48), plaintiff was and is entitled to the refund and repayment of the said thirty-six hundred ($3,600) dollars, exacted from and paid by him as aforesaid; that he duly applied to the Secretary of the Interior, in accordance with the rules and regulations of the Interior Department governing the repayment of money under the said Act of March 26, 1908, for the refund of said excess payment, but that officer, on the 24th day of April, 1915,
3 denied said application on the ground that said Section 2347 of the Revised Statutes authorizes him, the said Secretary of the Interior, to fix by appraisement prices for coal lands in excess of the ten dollars and twenty dollars an acre stated in the statute, and to sell such lands at the appraised prices.

5. For cause of action herein the plaintiff says that there is due and owing to him from the United States, by reason of the premises and by virtue of the Act of Congress of March 26, 1908 (35 Statutes at Large, page 48), the sum of thirty-six hundred ($3,600) dollars, exclusive of all setoffs, counterclaims and just grounds of defense on the part of the United States.

Wherefore plaintiff prays judgment against the United States in the sum of thirty-six hundred ($3,600) dollars, and for all proper relief in the premises.

HENRY FRIEDMAN,
*Claimant.*
By WM. R. ANDREWS,
*Attorney-in-Fact.*

WM. R. ANDREWS,
*Attorney for Claimant.*
CHAS. A. KEIGWIN,
*Of Counsel.*

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I am the attorney-in-fact and of record for the person named as plaintiff in the foregoing petition, and that the matters and things therein stated are true, according to my information and belief.

WM. R. ANDREWS.

Subscribed and sworn to before me this 31st day of July, A. D. 1918.

[NOTARIAL SEAL.]

S. A. TERRY,
*Notary Public within and*
*for the District of Columbia.*

4

II. *History of Proceedings.*

On August 7, 1918, the defendants filed a motion to dismiss claimant's petition.

On October 8, 1918, the claimant filed an answer to said motion.

On Nov. 13, 1918, the defendants filed a reply to claimant's answer.

On Dec. 2, 1918, the defendants' motion to dismiss was ordered to the files by the Court to be considered when the case is tried on merits.

III. *Argument and Submission of Case.*

On October 17, 1919, the case was argued and submitted on merits by Mr. William R. Andrews, for the claimant, and by Mr. George H. Thorne, for the defendants.

IV. *Findings of Fact and Conclusion of Law.*

Filed November 10, 1919.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

*Findings of Fact.*

I.

The plaintiff, Henry Friedman, of Chicago, in the State of Illinois, and a citizen of the United States, on or about the 1st day of December, 1909, filed in the United States land office at Salt Lake City, Utah, an application to purchase certain coal lands. His application was as follows:

5 Serial No. 05242.

Receipt No. 394,999.

Coal Lands—Application[1] to Purchase Under Sec. 2347 R. S.

Department of the Interior.

United States Land Office, Salt Lake City, Utah.

Dec. 11, 1909.

I, Henry Friedman of 815 Wilson ave., Chicago, Ill., do hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, to purchase the S. ½ SE. ¼ S. ½ SW. ¼ of section 9 in ownship 13 S. of range 8 E., in the district of lands subject to sale at the land office at Salt Lake City, containing 160 acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who is or are in good faith prosecuting work thereon for the development of coal; that I am twenty-one years of age; a citizen of the United States, and have never held or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

HENRY FRIEDMAN.

I hereby certify that the foregoing application was read to applicant in my presence before he signed his name thereto; that said applicant is to me personally known (or has been satisfactorily identified before me by —— ——), and that I verily believe him to be a qualified person and the person he represents himself to be, and that this application was subscribed and sworn to before me, at my office, in Salt Lake City, Utah, within the Salt Lake City, Utah, land district, on this Dec. 11, 1909.

ED. R. THOMPSON,
*Register.*

[1] This application must be personally verified by applicant before the Register or Receiver.

Subsequently, the plaintiff filed a supplemental affidavit, setting forth that he had expended about $125 in developing the vein of coal on said land, "and also the sum of $8,000, the amount of the purchase price charged by the United States, for said tract." That said moneys were from his own personal funds, and that said affidavit was made for the purpose of serving as additional evidence of his good faith in the matter of the application to purchase said land. Thereafter, on March 2, 1910, the plaintiff duly relinquished any claim in and to a portion of the land described in the application, namely, 40 acres thereof.

Before the plaintiff's said application was made, to wit, in 1907, the Land Office adopted regulations under which said land, and other lands belonging to the Government, had been appraised, and that fact was known to the plaintiff when his application was made. The appraised value of the lands purchased by plaintiff was $50 per acre.

On March 21, 1910, the register of the general land office at Salt Lake City, Utah, issued to the plaintiff a certificate of purchase as follows:

6 Coal Entry No. 05242.

Receipt No. 394,900.

Land Office at Salt Lake City, Utah.

March 21, 1910.

It is hereby certified that in pursuance of the Revised Statutes of the United States relating to coal lands Henry Friedman, residing at Chicago, Cook County, State of Illinois, on this day purchased of the register of this office the S. ½ SW. ¼ and SW. ¼ SE. ¼, township No. 13 south of range No. 1 east of the S. L. principal meridian, containing 120 acres, at the rate of fifty dollars per acre, amounting to six thousand dollars and no cents, for which the said Henry Friedman has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Henry Friedman shall be entitled to receive a patent for the land above described if all be found regular.

(Singned) ED. R. THOMPSON,
*Register.*

Indorsed on said receipt was the following: "Dec. 29, 1910, approved for patenting under sec. 2347, Rev. Stat."

The patent to said land was issued by the Government to the plaintiff on January 16, 1911, and the plaintiff has continued in the use and ownership of the land so purchased.

Said 120 acres of coal lands were at the time of said purchase situated within 15 miles of a completed railroad.

II.

The said officials of the United States Land Office at Salt Lake City, Utah, charged the plaintiff for said land the sum of $6,000, the same being at the rate of $50 an acre, which was the price fixed for said land by appraisal under the regulations of the Interior Department of April 12, 1907.

III.

Thereafter on or about October 7, 1914, the plaintiff applied to the Commissioner of the General Land Office, for the repayment under section 2 of the act of March 26, 1908, 35 Stat. 48, of $3,600 of the said purchase price of said land, alleging that the price charged him was $3,600 in excess of the price fixed by law; that the said commissioner, on August 9, 1915, denied the said application, and thereupon the plaintiff appealed to the Secretary of the Interior, who, on February 29, 1916, affirmed the decision of the said commissioner on the ground assigned that the price charged for said land was authorized by sections 2347-2351 of the Revised Statutes of the United States and the regulations adopted by the Secretary in pursuance of the statute, and the Secretary of the Interior did, on said last-mentioned date, finally reject the said application for repayment for the reason stated.

*Conclusion of Law.*

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and that his petition ought to be, and the same is hereby dismissed. Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be entered by the Chief Clerk and collected by him in the manner prescribed by law.

7 V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Tenth day of November, A. D., 1919, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the United States, and do order, adjudge and decree that the claimant, Henry Friedman, as aforesaid, is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed: And it is further ordered, adjudged and decreed that the United States shall have and recover of and from the claimant, Henry Friedman, as aforesaid, the sum of Seven dollars and twenty-two cents ($7.22), the cost of printing the record in this case in this court, to be collected by the clerk, as provided by law.

BY THE COURT.

VI. *Claimant's Application for, and Allowance of, an Appeal to the Supreme Court.*

Now comes the plaintiff, by William R. Andrews, his attorney, and prays the court for allowance of an appeal from the judgment entered herein on the 10th day of November, 1919, in favor of the defendant, to the Supreme Court of the United States.

WM. R. ANDREWS,
*Attorney for Plaintiff.*

Filed January 9, 1920.

Ordered:

That the above appeal be allowed as prayed for.

BY THE COURT.

Jan. 9, 1920.

8 Court of Claims.

No. 33,982.

HENRY FRIEDMAN

vs.

UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law; of the judgment of the court; of the application of claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Tenth day of January, A. D., 1920.

[Seal Court of Claims, Reipublicæ Civibusque.]

F. C. KLEINSCHMIDT,
*Assistant Clerk Court of Claims.*

Endorsed on cover: File No. 27,426. Court of Claims. Term No. 671. Henry Friedman, appellant, vs. The United States. Filed January 13th, 1920. File No. 27,426.